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EXAMINER

MALLARI, PATRICIA C

ART UNIT PAPER NUMBER

3736

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,644

Applicant(s)

BITTERHOF, ANDREAS

Examiner

Patricia C. Mallari

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 07 September 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

Claim 2 is objected to because of the following informalities: "separating medium" on line 2 of the claim should be replaced with "separating means".

Appropriate correction is required.

Claim 5 is objected to because of the following informalities: "claim2" on line 1 of the claim should be replaced with "claim 2". Appropriate correction is required.

Claim 10 is objected to because of the following informalities: on line 2 of the claim, "means against which" should be replaced with "means, against which".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3, 10, and 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3, the phrase "dish-shaped" renders the claim(s) indefinite because the specification fails to describe the shape intended by the use of the term "dish-shaped".

Claim 10 recites the limitation "display unit". There is insufficient antecedent basis for this limitation in the claim.

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Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. The claim merely recites "an analysis device" without reciting any elements of the device.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 6-9, and 11-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al. Smith discloses an absorbent element 12 onto which an analysis element 10 for testing the pH of a bodily fluid is adhered by adhesive strips 36. The analysis element 10 includes a separating means 28 at the lower outer layer of the analysis element 10 separating the analysis element 10 and the absorbent element 12. Visual display unit 34 provides a color change indicating pH analysis results. The analysis element 10 may also include a fluid absorbing and transport layer between the

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upper outer layer 26 and separating means 28 (figs. 1-5). The absorbing layer is comprised of an absorbent hydrophilic fiber, such as cellulose.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-8, and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. Glaug teaches a toilet training system comprising an absorbent element 24 having an analysis element 22 attached via adhesive layer 70. Analysis element includes a pad 50 having a liquid impermeable separating means 58 and a fluid absorbing and transport layer 56 which may comprise cellulose sponge (fibers). The separating means 58 prevents liquid that has penetrated to absorbent element 24 away from analysis element 22 (figs. 1-11).

Claims 1-9, 11-13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Mims, Jr. Mims, Jr. teaches an analysis element 11 attached to an absorbent element 10 via adhesive surfaces 43. Analysis element 11 includes a liquid impervious separating element 30, a fluid absorbing and transport layer 31, and a visual display unit 40 that provides a color change in the presence of moisture. The inner surface 34 of liner 43 folds over onto itself to form sidewalls 45 (fig.1-6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Mims, Jr. Smith lacks sidewalls extending up on a side facing the body and/or edges of the insert that are folded over on an upper side. However, Mims, Jr. teaches a liner 11 for an incontinence garment 10, where the liner 11 has a lip 45 provided about the periphery of the liner. Figure 6 shows this lip 45 as being formed by the edges of the inner surface 34 of the liner 11 being folded over onto itself (figs. 4 and 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the liner of Mims, Jr. with the undergarment and article of Smith et al. in order to further reduce the chance of leakage from a user.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug et al. in view of Mims, Jr. Glaug lacks sidewalls extending up on a side facing the body and/or edges of the insert that are folded over on an upper side. However, Mims, Jr. teaches a liner 11 for an incontinence garment 10, where the liner 11 has a lip 45 provided about the periphery of the liner. Figure 6 shows this lip 45 as being formed by the edges of the inner surface 34 of the liner 11 being folded over onto itself (figs. 4 and 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the liner of Mims, Jr. with the toilet training system of Glaug et al. in order to further reduce the chance of leakage from a user.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mims, Jr. in view of Todd et al. Mims, Jr. lacks a partially transparent separating means that

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allows visual reading of the display unit. However, Todd discloses a moisture indicator 10 having a wicking strip 24, where a moisture indicating substance 28 is applied to a portion of the wicking strip 24 and provides a color change upon contact with moisture. The wicking strip is immediately adjacent to a transparent outer ply 14 of moisture impervious plastic (figs. 1 and 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine the moisture indicator of Todd et al. with the liner and incontinence garment of Mims, Jr. in order to facilitate a user or other person to determine the presence of moisture while minimizing discomfort to the user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent No. 6,251,083 to Yum et al. US Patent No. 5,036,861 to Sembrowich et al.

US Patent No. 6,246,330 to Nielsen. US Patent No. 4,756,314 to Eckenhoff et al.

US Patent No. 5,797,892 to Glaug et al. US Patent No. 5,899,856 to Schoendorfer et al.

US Patent No. 4,846,182 to Fogt et al. US Patent No. 5,203,327 to Schoendorfer et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia C. Mallari whose telephone number is (703) 605-0422. The examiner can normally be reached on Mon-Fri 9:30 am-7:00 pm (alternate Fri. off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (703) 308-3130. The fax phone

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number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Patricia Apella
pcm

Robert L. Nasser 2
ROBERT L. NASSER
PRIMARY EXAMINER